



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Do-Less Mowing Services

File: B-235425; B-235426; B-235427

Date: August 29, 1989

DIGEST

1. Protest challenging affirmative determinations of responsibility raised by highest aggregate bidder, which would not be in line for award if the protest were sustained, is dismissed, since the protester lacks the requisite direct and substantial economic interest in the contract award to be considered an interested party under General Accounting Office Bid Protest Regulations.

2. Protest that contracting officials' affirmative determinations of responsibility were biased in favor of contractors with which it previously dealt is dismissed where allegation is based solely on inference or supposition.

DECISION

Do-Less Mowing Service protests the award of three contracts under invitations for bids (IFBs) Nos. 37-89-115, 38-89-115 and 39-89-115, issued by the Department of Housing and Urban Development (HUD) for lawn maintenance services.

We dismiss the protest.

On March 6, 1989, HUD issued three solicitations for lawn maintenance services for HUD-owned single family properties in three geographical areas of San Antonio and Bexar County, Texas. Bid opening was scheduled for April 5. At bid opening, there were 9 bids for IFB No. 37-89-115, 15 bids for IFB No. 38-89-115 and 12 bids for IFB No. 39-89-115. Mowhawk Landscaping was the low aggregate bidder for IFBs Nos. 37-89-115 and 38-89-115 at \$12 for each initial cut and each regular cut. Tejas Services was the low aggregate bidder for IFB No. 39-89-115 at \$19.36 for the initial cut and \$10.78 for the regular cuts. Under all three solicitations, the protester was the second-highest bidder for the initial cuts at \$117.36 and the highest bidder for the regular cuts at \$77.36.

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Both the responsiveness of the low bids and the responsibility of the low bidders was reviewed in accordance with the solicitation and the Federal Acquisition Regulation (FAR). Based on these reviews, the contracting officer made award to Mowhawk on IFB Nos. 37-89-115 and 38-89-115 and to Tejas on IFB No. 39-89-115 on April 28, with services to begin on May 1. On May 5, Do-Less filed a protest with our Office alleging that the contracting activity fraudulently permitted the awardees to ignore the wage rates of the Service Contract Act when computing their bids and, therefore, gave them an unfair competitive advantage.

The head of the contracting activity subsequently determined that it was in the government's best interest, in accordance with the HUD Acquisition Regulation, 48 C.F.R. § 24.333.104(d), and FAR § 33.104, to proceed with performance of the contracts notwithstanding the protests.

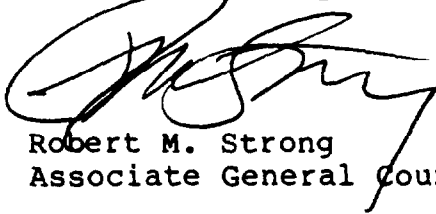
HUD maintains that the protest should be dismissed because Do-Less is not an "interested party" under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1988). HUD argues that even if Do-Less's protest were upheld, it would not be in line for award because it submitted the highest aggregate bid and there are intervening bidders with materially lower bids.

We agree with the agency. Do-Less' charge that the awardees' bids do not conform to the Service Contract Act requirements constitutes a challenge of the contracting official's affirmative determination of responsibility. While Do-Less challenges the awardees' responsibility, it does not question the responsibility of intervening bidders. We have consistently held that a protester's interest in a procurement is too remote to render the protester an interested party within the meaning of our Regulations where it challenges the responsibility of the awardee but there are intervening bidders whose eligibility for award it has not challenged. Prison Match, Inc., B-233186, Jan. 4, 1989, 89-1 CPD ¶ 8. The protester has not challenged the acceptability of the bids of all other offerors who bid less than it did and, in fact, concedes that it is not in line for award considering its position as high bidder. Accordingly, we find Do-Less is not an interested party.

In any event, to the extent that Do-Less alleges fraud on the part of the procurement officials in permitting the awardees to ignore the wage rates, it has failed to provide any evidence. In order to show that a responsibility determination was made in bad faith the protester has a

heavy burden of proof. GPD Enterprises, Inc., B-234193, Feb. 21, 1989, 89-1 CPD ¶ 182. Procurement officials are presumed to act in good faith, and in order to show otherwise, a protester must submit virtually irrefutable proof that the agency had a specific and malicious intent to harm the protester. Id. Do-Less offers no proof to support its proposition that the awardees' substantially lower bids than its own were the result of fraudulent activity on the part of contracting officials.

We dismiss the protest.



Robert M. Strong
Associate General Counsel